1946

File No. O. Wakf/46

Legal Department

A **BRANCH**

Subject:—

Opinions under the

Mussalman Wakf Act-

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Submitted.

2. Please see R.D. note at p. 29 ante. By G.M.L.D.No. 2217-C/33, dated 28/10/1941, Government nominated three persons on the District Wakf Committee for Broach and Panch Mahals under sec. 6L(1) of the Mussalman Wakf. Act, 1926 . The tenure of the Committee it appears expired on 5.1.1945 and no committee was, thereafter constituted. By G.R.R.D. No. 8219/28, dated 21-2-45 Govt. split up the Broach District into Broach and Panch Mahals. R.D. states that since the Panch Mahals has been created a separate district under sec. 6L(1) it is necessary to constitute a separate Wakf committee for this district. The R.L.A. is requested to advise whether the provisions of sec.6L(1) would not apply in the case of the Panch Mahals District which has been created a separate deistrict temporarily and whether it is proper to proceed with the nominations of the members on the combined committee as proposed by the Collector.

3. Sub-section (1) of section 6L of the Mussalman Wakf Act, 1923, as amended by Bombay Act XVIII of 1935 provides that there shall be constituted in each district a Wakf Committee to advise and assist the Court in all matters relating to the registration, superintendence, administration and control of Wakfs. "District" as defined by section 2(bb) means a district constituted under sec. 3 of the Bombay Civil Courts Act, 1869, and includes the City of Bombay. Section 3 of the Bombay Civil Courts Act, 1869 provides that the Provincial Government may from time to time, by a notification in the official gazette, alter the limits of existing x Zilas (which shall hereafter be called districts) and create new districts for the purposes of this Act.

P.T.O.

By J.D. notification No.4302, dated 16-8-1904, the judicial district of Broach was created and by H.D. notifn. No.5770-I, dated 14-7-1925, the revenue district of Panch Mahals was excluded from the Ahmedabad judicial district and included it in the Broach judicial district styling the District Court of Broach as the District Court of Broach and Panch Mahals (pl. see Local Rules and Orders Vol. IV pp.12/13). It is presumed this position continues even after the splitting up of the Broach District into the Broach and the Panch Mahals District. Althogh the revenue district of Broach is split up into two revenue districts, namely, the Broach and the Panch-Mahals districts, no separate wakf committee need be constituted under sec. 6L(1) of the Mussalman Wakf Act, 1923, as Broach and Panch Mahals is one judicial district under section 3 of the Civil Courts Act, 1869 (cf. R.L.A.'s opinion No. 7858, dated 28th September 1942). The papers may be returned and xx attention of that department may be invited to R.L.A's opinion No. 7858, dated 28-9-1945.

Sd/- P.S.Nadkarni
7-5-.

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Office of the R.L.A.

The attention of Revenue Department is invited to R.L.A's opinion No. 7858, dated 28-9-1942 where a similar question was considered.

Id/- P.N.M.
18/5/46.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 6762, dated 20th May 1946.

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Office of the R. L. A.

The revised rates of contribution sanctioned in Government Notification (Revenue Department) No. 2217/33, dated the 30th March 1944, came into effect from 1st April 1944. Consequently the revised rates would be applicable to the contributions that become payable on or after 1st April 1944. Reading Rule 18 of the Bombay Mussalman Wakf Rules, 1936, with sections 5 and 6-1 of the Mussalman Wakf Act, 1923, it appears that although the annual contributions are to be paid on or before 30th June, they become payable on 1st April. Consequently the annual contributions for the year 1943-44, which became payable on 1st April 1944, should be assessed according to the revised rates, while those for the previous year i.e. 1942-43, which became payable on 1st April 1943, should be assessed according to the old rates, though they are paid after 1st April 1944. The view taken by the District Judge, Thana is correct.

Sd/- P.N.M.
3/10/46.

Remembrancer of Legal Affairs.

U.O.R. to R.D.No. 6753 dated the 4th October 1946.

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Office of the R.L.A.

The questions for the consideration of the R.L.A.are:-

(1) Whether the eleven members of the Thana, Kolaba and Bombay Suburban District Wakf Committee who were elected by the Municipalities and Local Boards in the areas detailed in Schedule 'A', Part II annexed to the Greater Bombay Laws and the Bombay High Court (Declaration of Limits) Act, 1945,(Act XVII of 1945) can be appointed as members of the present Bombay Wakf Committee on the ground that the Wakfs in the said areas had been brought under the jurisdiction of the Chief Judge, Small Cause Court, Bombay.

(2) Whether members of the Legislative Assembly (Provincial) who were declared elected during the last elections (other than those re-elected who are already on the Committee) can be notified as members of the Present Bombay Wakf Committee.

(3) Whether members of the present Bombay Wakf Committee notified as such under section 6-L(2)(a) of the Mussalman Wakf (Bombay Amendment) Act, 1935, cease to hold their office on the ground that they are no longer members of the Legislative Assembly (Provincial).

2. Under sub-section (1) of section 6(L) of the Mussalman Wakf Act, 1923, as amended by Bombay Act XVIII of 1935, a Wakf Committee shall be constituted in each district to adgise and assist the Court in all matters relating to the registration, superintendence, administration and control of Wakfs. Sub-section (2) prescribes the constitution of the Committee under which it shall consist of -

(a) the members of the Indian and Provincial Legislatures;

(b) two members elected in the prescribed manner by the Mutawallis of all Wakfs in the district registered under the Act;

(c) two members elected in the prescribed manner by the members of each district local board in the district professing the Mussalman faith from among their number ;

(d) one member elected in the prescribed manner by the members professing the Mussalman faith of each municipality under the District Municipal Act, 1901;

(e) two members elected in the prescribed manner by the members professing the Mussalman faith of each Municipality in the district constituted under the City of Bombay Municipal Act, 1888,..... or the Bombay Municipal Boroughs Act, 1925, and

(f) such other members not exceeding one - forth of the total number of the members of the Committee as the Provincial Government may nominate: Provided that no person who does not ordinarily reside in the district or does not profess the Mussalman faith shall be eligible to be a member of the Committee,

P.T.O.

3. The term 'prescribed' as defined in clause (d) of section 2 of the Act means prescribed by rules made under the Act. Under clause (f-9) of subsection (2) of section 11, it is open to the Provincial Government to make rules provides for the number of members who shall constitute a Wakf Committee, the period of office of a Wakf Committee and the manner in which such Committee shall hold its meetings the precedure to be followed at their meetings.

4. Sub-rule (1) of rule 22 of the Bombay Mussalman Wakf Rules, 1936, provides that the members of the Wakf Committee shall, save as herein provided, hold office for three years, but shall be eligible for re-appointment. The words "save as herein provided" refer to cases of the nature provided for in sub-rule (2), (3) and (5) of rule 22. Sub-rule (7) provides that the term of office of the members shall commence on the date of the first meeting of the Committee held under rule 23, and a month before the expiration of the said period the Court shall proceed to constitute a new committee in accordance with the provisions of rule 21 so far as they apply. The term of the outgoing members shall be deemed to extend to and expire with the day before the date of the meeting of new members held under rule 23.

5. As the Bombay Wakf Committee, was constituted in 1945, under sub-rule (1) read with sub-rule (7) of rule 22, the members of the Committee shall hold office for a period of three years commencing from the date of the first meeting of the Committee under rule 23, and the term of the office will extend to and expire with the day before the date of the meeting of the new members. There is no provision either in the Act or in the Rules empowering Government to dissolve a Wakf Committee validly constituted or to alter its constitution. In the present case the Wakf Committee, Bombay, consists of 18.

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....members, and unless the case of any member falls within the ambit of sub-rule (2),(3) or (5) of rule 22, the members of the Committee so constituted will continue to remain in office for three years.

6. That being the legal position neither the eleven members of the Thana, Kolaba and Bombay Suburban District Wakf Committee who were elected by the Municipalities and Local Boards in the areas detailed in Schedule 'A' , Part II annexed to the Greater Bombay Laws and the Bombay High Court (Declaration of Limits) Act, 1945 (Act XVII of 1945), can be appointed as members of the present Bombay Wakf Committee on the ground that the Wakfs in the said areas had been brought under the jurisdiction of the Chief Judge, Small Cause Court, Bombay, nor members of the Legislative Assembly (Provincial) who were declared elected during the last elections (other than those re-elected who are already on the Committee) can be notified as members of the present Bombay Wakf Committee. In view of the provisions of rule 22 (4) it is obvious that members of the present Bombay Wakf Committee notified as such under section 6-L(2)(a) of the Mussalman Wakf (Bombay Amendment) Act, 1935, do not cease to hold office merely on the ground that they are no longer members of the Legislative Assembly.

Sd/- P.N.M.
26/11/46.

Remembrancer of Legal Affairs.

U.O.R. to R.D. No. XXIX 8491, dated the 27th November 1946.

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